

Public Chapter 477

HOUSE BILL NO. 1073

By Representative McMillan

Substituted for: Senate Bill No. 747

By Senator Cohen

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 2, Part 1 and Title 36, Chapter 2, Part 2, relative to the establishment of parentage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 2 is amended by deleting Parts 1 and 2 in their entirety and substituting instead the following:

36-2-101. Statement of Purpose.

This chapter provides a single cause of action to establish parentage of children other than establishment by adoption pursuant to Tennessee Code Annotated, Title 36, Chapter 1, or by acknowledgement of parentage pursuant to Tennessee Code Annotated Sections 68-3-203(g), 68-3-302 or 68-3-305(b).

36-2-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Child born out of wedlock" means a child born to parents who are not married to each other when the child was born;

(2) "Court" means the juvenile court or any trial court with general jurisdiction;

(3) "Father" means the biological father of a child born out of wedlock;

(4) "Mother" means the biological mother of a child born out of wedlock;

(5) "Parent" means the biological mother or biological father of a child, regardless of the marital status of the mother and father;

(6) "Father", "mother", and "parent" shall not include a biological parent whose parental rights have been terminated for a child whose parentage is at issue.

36-2-103. Custody Absent an Order of Custody.

Absent an order of custody to the contrary, custody of a child born out of wedlock is with the mother.

36-2-104. Presumption of Parentage.

(a) A man is rebuttably presumed to be the father of a child if:

(1) he and the child's mother are married or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(2) before the child's birth, he and the mother have attempted to marry each other in compliance with the law, although the attempted marriage is or could be declared illegal, void and voidable;

(3) after the child's birth, he and the mother have married or attempted to marry each other in compliance with the law although such marriage is or could be declared illegal, void, or voidable and:

(A) he has acknowledged his paternity of the child in a writing filed under the putative father registry established by the Tennessee Department of Children Services, pursuant to Tennessee Code Annotated § 36-2-115; or

(B) he has consented in writing to be named the child's father on the birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he receives the child into his home and openly holds the child out as his natural child; or

(5) genetic tests have been administered as provided in Tennessee Code Annotated, § 24-7-112, an exclusion has not occurred, and the test results show a statistical probability of parentage of ninety-five percent (95%) or greater.

(b) A presumption under subsection (a) may be rebutted in an appropriate action. Where the presumption arises as a result of the marriage of the mother and father and the child is still living, any action to rebut such presumption shall be brought within two (2) years of the birth of the child. The standard of proof shall be by a preponderance of the evidence.

(c) All prior presumptions of parentage established by the previous paternity and legitimation statutes and cases are abolished.

36-2-105. Agreement to Establish Parentage - Complaint to Establish Parentage - Parties - When Action May be Brought - Order of Protection.

(a) The court may enter an order of parentage upon the agreement of the mother and father unless the court on its own motion orders genetic testing. In any such agreement, the mother and father must affirmatively acknowledge their parentage of the child. Any agreement under this part shall comply with the requirements of Tennessee Code Annotated, Section 36-2-111.

(b) Absent an agreement or an acknowledgement of parentage as prescribed by Tennessee Code Annotated §§ 68-3-203(g), 68-3-302, or 68-3-305(b), a complaint to establish parentage may be filed. Except as hereinafter provided, Tennessee Rules of Civil Procedure shall govern all actions under this subsection.

(1) A complaint to establish parentage of a child may be filed by:

(A) the child, if the child has reached the age of majority, or if the child is a minor, the child through a guardian or next friend;

(B) the child's mother, or if the mother is a minor, the mother's personal representative, parent, or guardian;

(C) a man claiming to be the child's father, or if he is a minor, his parent, guardian, or personal representative;

(D) a personal representative of the State of Tennessee Department of Human Services or its successor agency.

(2) One (1) man or several men may be named as the father. The naming of one (1) man as father does not preclude a later suit against another man if the court finds that the first man is not the father of the child.

(3) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process, the taking of depositions to preserve testimony, and the performance of genetic testing.

(4) If the alleged father threatens or attempts to harm the complainant in any manner, the court may enter an order of protection pursuant to chapter 3, part 6 of this title. Nothing in this subsection shall be construed to alter or increase the jurisdiction of the juvenile courts to issue orders of protection except when the parties are before the court in connection with a complaint filed pursuant to Section 36-2-101 et seq.

(5) The action may be commenced by service of a summons as in civil cases and tried as a civil action. In the alternative, notice of the filing of the complaint shall be delivered to the defendant or his or her representative or shall be sent to the defendant at his or her last known address. If the defendant fails to make an appearance or file and answer to the complaint, the court may proceed as in civil cases or may issue a warrant for the apprehension of the defendant, directed to any officer in this State authorized to execute warrants, commanding such officer without delay to apprehend the defendant and bring the defendant before the court for the purpose of having an adjudication as to the paternity of the child, and such warrant may be issued to any county of this State.

36-2-106. Statute of Limitations.

(a) An action to establish the parentage of a child may be instituted before or after the birth of the child and until three (3) years beyond the child's age of majority. The provisions of this chapter shall not affect the relationship of parent and child as established in Tennessee Code Annotated, Section 31-2-105.

(b) An action to establish parentage may be brought on behalf of a child in whose behalf a paternity action could have been brought under this chapter on August 16, 1984, but for whom no such action was brought, or for whom a paternity action was brought but was dismissed because the previous more restrictive statute of limitations was then in effect. Nothing herein shall be construed to permit the filing of any paternity action after the statute of limitations established by subsection (a).

36-2-107. Jurisdiction Venue.

(a)(1) The Juvenile Court or any trial court with general jurisdiction shall have jurisdiction of an action brought under this chapter. Provided, however, in any county having a population not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 Federal Census or any subsequent Federal Census, only the Juvenile Court shall have jurisdiction of an action brought under this chapter.

(2) The court shall have statewide jurisdiction over the parties involved in the case.

(b) Any minimum contact relevant to a child being born out of wedlock that meets constitutional standards shall be sufficient to establish the jurisdiction of the courts of Tennessee over the parents for an action under this chapter. Any conduct in Tennessee that results in conception of a child born out of wedlock shall be deemed sufficient contact to submit the parents to the jurisdiction of the courts of Tennessee for action under this chapter.

(c)(1) The complaint may be filed in the county where the father resides or is found, the county where the mother resides or is found, or the county in which the child resides or is present when the application is made. However, a man who seeks to establish parentage of a child who is the subject of a pending petition for adoption pursuant to Title 36, Chapter 1, Part 1, must file this petition in the court where the adoption petition is filed.

(2) Any complaint to establish parentage which may be filed or which is pending in any court subsequent to the filing of an adoption petition involving the same child shall be transferred for any further proceedings to the court where the adoption proceedings are pending on motion of any party to the paternity complaint or the adoption petition, on the court's own motion, or upon the request of the court in which an adoption petition is pending.

(3) The adoption court shall have exclusive jurisdiction to determine the issues relating to the parentage of the child.

(4) Any order of parentage entered by any court other than the adoption court subsequent to the date of the adoption petition is filed shall be void, unless the adoption petition is denied or dismissed.

(d)(1) If the mother was legally married and living with her husband at the time of conception and has remained together with that husband through the date a petition to establish parentage is filed and both the mother and her husband file a sworn answer stating that husband is the father of the child, any action seeking to establish parentage must be brought within twelve (12) months of the birth of the child. In the event that an action is dismissed based upon the

filing of such a sworn answer, the husband and wife who filed such sworn answer shall be estopped to deny paternity in any future action.

(2) In parentage actions other than those governed by subdivision (d)(1), such actions shall be dismissed unless the husband was in jail at the time of conception, husband and wife were separated at the time of conception, husband or wife consents to the action or the issue of the child's parentage is otherwise in question.

36-2-108. Conduct of Trial - Expedited Hearings.

(a) The trial shall be without a jury.

(b) Hearings under this section shall be expedited on the court's civil docket.

(c) Upon proper motion, default judgement shall be entered against the defendant upon showing of service of process on the defendant where the defendant has failed to answer or make an appearance within thirty (30) days of service of process.

(d) Bills for the mother's care during pregnancy and childbirth and genetic testing shall be admissible without requiring third party foundation testimony and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

36-2-109. Tests to Determine Parentage.

(a)(1) In any contested paternity case, unless the individual is found to have good cause under Section 454(29) of the Social Security Act (42 U.S.C. 654(29)), the court, or the Department of Human Services in Title IV-D child support cases, shall order the parties and the child to submit to genetic tests to determine the child's parentage upon the request of any party if the request is supported by an affidavit of the party making the request:

(A) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(B) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties; or

(C) Denying paternity.

(2) In addition, upon the court's own motion, at such times as it deems equitable, or by administrative order by the Department of Human Services in Title IV-D child support cases, tests and comparisons pursuant to this section and § 24-7-112 shall be ordered.

(b)(1) Absent the request of a party pursuant to subsection (a)(1), during any proceeding pursuant to this part in which the question of parentage arises, upon the motion of either party or on the court's own motion, the court shall at such time as it deems equitable, or the Department of Human Services in Title IV-D child support cases, may order all necessary parties to submit to any tests

and comparisons which have been developed and adapted for purposes of establishing or disproving parentage.

(2) In any proceeding pursuant to this part, the tests ordered shall be conducted by an accredited laboratory. In the case of genetic tests, and at such time as the Secretary of the United States Department of Health and Human Services of designates accreditation entities which acknowledge the reliability of types of genetic tests used in the establishment of paternity, such genetic tests shall be of the type which are generally acknowledged as reliable by accreditation entities designated by the Secretary and the genetic tests shall be performed by a laboratory approved by such a designated accreditation entity.

(3) The results of such tests and comparisons which are ordered pursuant to this section, including the statistical likelihood of the alleged parent's parentage, if available, may be admitted into evidence as provided in § 24-7-112(b).

(c) The State of Tennessee, its officers, employees, agents or contractors shall not be liable to any person for, nor be ordered to refund to any person, any monies received pursuant to an order entered pursuant to this part which is subsequently set aside by the court due to a finding of non-paternity of the person previously adjudicated as the child's father. Nothing in this subsection shall preclude the issuance of a judgement against the mother or actual biological father of the child or children in favor of the person subsequently found not to be the father of a child or children.

36-2-110. Temporary Order of Support.

The court shall, upon motion of the party, enter a temporary order of child support pending the final determination of paternity upon a showing of clear and convincing evidence of parentage on the basis of genetic tests.

36-2-111. Order of Parentage.

(a) Upon establishing parentage, the court shall make an order declaring the father of the child. This order shall include the following:

- (1) the full names and residential and mailing addresses of the mother, father and child, if known;
- (2) the dates of birth and social security numbers of the mother, father and the child, if known;
- (3) the father's place of birth, if known;
- (4) the home telephone number of the mother and the father, if known;
- (5) the driver's license numbers of mother and father, if known;
- (6) the name, address and telephone number of mother and father's employers, if known;
- (7) the availability of health insurance to cover the child, if known;
- (8) determination of the child's name on his or her birth certificate;

(9) determination of the custody of the child pursuant to Tennessee Code Annotated, Section 36-6-101 et seq.

(10) determination of visitation or parental access pursuant to Tennessee Code Annotated, Section 36-6-101 et seq.;

(11) determination of child support pursuant to Tennessee Code Annotated, Section 36-5-101 et seq.

In determining retroactive support, if any, deviation from the guidelines may occur at the discretion of the court. The court must make a written finding that application and guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties. Nothing in this provision shall limit the right of the State of Tennessee to recover expenditures made by the State for the benefit of the child or the obligation of the Title IV agency to pursue retroactive support for the custodial parent where appropriate.

(12) determination of liability for funeral expense to either or both parties, if the child is deceased;

(13) determination of liability for a mother's reasonable expenses for her pregnancy, confinement and recovery to either or both parties; and

(14) determination of the liability for counsel fees to either or both parties after consideration of all relevant factors.

(b) This order may include the following:

(1) an order of protection; and

(2) any provision determined to be in the best interests of the child.

(c) All provisions of chapter 5 of this title that relate to child support and Tennessee Code Annotated, Section 50-2-105 shall apply to support orders issued in any action under this chapter.

(d)(1) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office and shall update, as appropriate, the party's:

(A) Full name and any change in name;

(B) Social security number and date and place of birth;

(C) Residential and mailing addresses;

(D) Home telephone numbers;

(E) Driver's license number;

(F) The name, address, and telephone number of the person's employer; and,

(G) The availability and cost of health insurance for the child.

The requirements of this subdivision may be included in the court's order.

(2) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (d)(1) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after the effective date of this act, clear written notice shall be given to each party of the requirements of this subsection, procedures for complying with the subsection and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(3) In any subsequent child support enforcement action, the delivery of written notice as required by Tennessee Rule of Civil Procedure 5 to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in (d)(1) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(4) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victim(s) or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

(e) Upon motion of either party upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number and location of the alleged victim or threatened victims of such circumstances.

36-2-112. Custody and Visitation Issues.

(a) In any case which is brought by the Department of Human Services or its contractors, the Title IV-D child support office shall have no authority to represent the State of Tennessee on issues of custody or parental access. The fact that custody and parental access are sought in a petition which is filed by the department or its contractors to comply with this part, or that the court orders the department or its contractors to enter the finding of fact or the conclusions of law of the court relative to a custody or parental access determination in its order, shall not be deemed to make the department or its contractors responsible for presenting any evidence on these issues or to have any continuing duty to present evidence on these issues in any subsequent hearing. The department or its contractors shall have the duty to inform the individuals in the Title IV-D case that the department or its contractors will not provide legal assistance relative to custody or parental access and that the individual has a right to independent counsel for such representation.

(b) The department may apply for and utilize any federal grants for the purpose of implementing a pilot project for access and visitation programs. The department may contract with other persons or entities to establish the pilot projects which will be administered by the department; provided, however, in establishing any such pilot project through contract, the department shall give preference to existing family preservation services programs, family resource centers, headstart programs and other established programs for children.

36-2-113. Inheritance of Child from Father - Information to Commissioner of Health - New Birth Certificates.

(a) When, under the provisions of this chapter, the relationship of father and child is established, the child shall be entitled to inherit from the father as if born to the father in wedlock.

(b) When an order of parentage has been entered, the clerk of the court shall transmit to the Commissioner of Health on a form prescribed by the commissioner, a written notification as to such order, together with such other facts as may assist in identifying the birth record of the child whose parentage is at issue. The form shall contain at a minimum the information required by Tennessee Code Annotated, Section 36-2-111(a)(1)-(8). If such order shall be abrogated by a later judgment or order of the same or a higher court, that fact shall be immediately communicated in writing to the commissioner on a form prescribed by the commissioner by the clerk of the court which entered such order, if the information is available in the court records.

(c) When an order of parentage has been entered, the clerk of the court shall forthwith transmit a certified copy of the order and the completed application for a new certificate of birth by parentage to the Director of Vital Statistics who shall issue a new certificate of birth by parentage in conformity with the rules and regulations of the Department of Health.

36-2-114. Clerk's Fee.

The clerk's fee for services in an application for an order of parentage shall be fifty dollars (\$50.00) plus any litigation tax, if applicable to be paid by the party petitioning subject to final assessment by the court.

36-2-115. Appeals.

An appeal from any final order of parentage as provided for in this chapter may be taken to the court of appeals pursuant to the Tennessee Rules of Appellate Procedure.

36-2-116. Discrimination against children born out of wedlock - Penalty.

(a) No child born out of wedlock shall be deprived of any civil benefit afforded to other citizens by law.

(b) Any person, including any employee or official of any governmental agency, who deprives any person of any civil benefit afforded to other citizens by law, by reason of the child being born out of wedlock, commits a Class C misdemeanor.

36-2-117. Official references to illegitimacy.

No explicit references shall be made to illegitimacy in any legal proceeding, record, certificates or other papers except the Departments of Human Services and Health may keep records of out-of-wedlock births.

36-2-118. Putative father registry.

(a) The Department of Children's Services shall establish a putative father registry which shall be maintained by the department's adoptions unit in the Department's State Office in Nashville.

(b) The registrar of the division of vital records of the Department of Health shall notify the department's registry of all orders of parentage received by the registrar pursuant to § 36-2-111, or of any acknowledgements of parentage received by the registrar pursuant to § 68-3-203(g), § 68-3-302 or § 68-3-305(b), on a form or by any electronic information exchange method agreed upon by the Commissioners of Children's Services and Health. Such notification shall occur on a daily basis in order to update the putative father registry on a current basis.

(c) The registry shall contain the names of the persons listed in subdivision (3) and any other information required in subdivisions (e)(1)-(3).

(d)(1) Those persons contained on the registry shall be given notice by the petitioners in proceedings for the adoption of a child or for the termination of parental rights involving a child, and they shall be necessary parties to the proceedings, and, except as they may waive their rights under subsection (f), must have their parental rights to the child terminated prior to entry of an adoption order, as may be required pursuant to chapter 1, part 1, of this title, unless they have executed a surrender, waiver of interest, or parental consent as provided in chapter 1, part 1 of this title.

(2) Nothing in this section shall be construed to eliminate the requirement to terminate the parental rights of any person if such person meets all of the requirements of a legal or biological parent pursuant to Section 36-1-117, even if he is not registered.

(e) The registry shall contain the names of the following persons:

(1) Those persons, their addresses, if available, the name of the child, and the name of the biological mother of the child, if available, for whom the registrar of the Division of Vital Records of the Department of Health has a record that an order of parentage has been entered involving any person and those persons for whom the registrar has a record of any acknowledgement of parentage executed under the provisions of Section 68-3-203(g), § 68-3-302 or § 68-3-305(b), and their addresses, if available, the name of the child, and the name of the biological mother of the child appearing on the acknowledgment;

(2) Those persons who have filed with the registry a certified copy of a court order from this State or any other state or territory of the United States or any other country which adjudicates such person to be a father of a child born out of wedlock, and those persons who have filed with the registry a copy of a sworn acknowledgement of parentage executed pursuant to the law of this State or pursuant to the law of any other state or territory or any other country; or

(3) Those persons who have filed only a written notice of intent to claim paternity of a child with the putative father registry either prior to, or within thirty (30) days after, the birth of such child.

(f)(1) Those persons who have filed only a written notice of Intent to claim parentage of a child pursuant to subdivisions (e)(2) and (3) shall include with such notice of his name, his current address and his current telephone number, if any,

and, if filed under subdivision (3) he shall include the name of the child, if known, for whom he claims parentage and the name of the child's biological mother and the current legal or physical custodian, and their address and telephone number, if known, any other information which may identify the child and the child's whereabouts. This information shall be maintained on the registry.

(2) The person filing written Notice of Intent to claim parentage pursuant to subdivision (e)(3) shall be responsible for notifying the registry of any change of address and telephone number within ten (10) days of that change. Failure to do so within the ten day period shall constitute a waiver of any right to notice of any proceedings for the adoption of the child for whom the person seeks to claim parentage, unless he is otherwise entitled to notice pursuant to Section 36-1-117(b) or (c).

(g) A person who has filed a notice of intent to claim parentage under subdivision (e)(3) may revoke the notice at any time in writing to the registry, and upon receipt of such notification by the registry, the notice of intent to claim parentage shall be deemed a nullity as of the date it is filed.

(h) Any notice of intent to claim parentage filed under subsection (e), whether revoked or still in effect, may be introduced in evidence by any other party, other than the person who filed such notice, in any proceeding in which the parentage of a child may be relevant including proceedings seeking payment of child support, medical payments on behalf of the child, or any other payments, or which may involve the payment of damages involved in connection with such parentage.

(i) Any person listed on the registry pursuant to subdivisions (e)(1)-(3) by the department shall be notified by the department, based upon the information filed with the registry, of any proceedings for the adoption of any child or the termination of parental rights of any child of which the department's State Office Adoption Unit has actual notice of filing and for whom the registrant has made a claim of parentage, unless the person has previously executed an unrevoked surrender of the child or waiver of interest pursuant to § 36-1-111, or has consented to the child's adoption in accordance with chapter 1, part 1, of this title, or unless the person's parental rights have been terminated by court action.

(j) A person listed on the registry and entitled to notice of pending adoption or termination proceedings under subdivision (e)(3) shall have thirty (30) days from the receipt of such notice to file a complaint for parentage or to intervene in the adoption proceedings or termination of parental rights proceedings for the purpose of establishing a claim to parentage of the child or to present a defense to the termination or adoption case. The failure of such person to file a petition to intervene shall be sufficient cause for the court where the adoption proceedings or termination proceedings are pending to terminate the parental rights, if any, of such person pursuant to § 36-1-113(g)(8)(A)(vi).

SECTION 2. (a) Any petition for legitimation filed prior to the effective date of this act shall be adjudicated based upon the law in effect prior to the effective date of this act. Any order which results from a petition for legitimation in such circumstance shall be effective to establish all rights and responsibilities arising under the provisions of title 36, chapter 2, part 2 as it existed prior to the effective date of this act whether the order is entered on or after the effective date of this act.

(b) Nothing in this act shall be construed to alter or disturb any rights which accrued to any person or responsibilities assumed by any person pursuant to title 36,

chapter 2, part 2 of the Tennessee Code Annotated prior to the effective date of this act including the authority of the State Registrar to issue certificates of birth pursuant to the provisions of title 68, chapter 3, part 3 for children who have been the subject of orders of legitimation pursuant to court orders entered before or after the effective date of this act which are based upon petitions filed prior to the effective date of this act and which petitions resulted in orders of legitimation for those children.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect on July 1, 1997, the public welfare requiring it.